
(2005) 07 BOM CK 0132
In the Bombay High Court
Case No : Criminal Appeal No. 76 of 2001

Chatur

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 452

Citation : (2005) 07 BOM CK 0132

Hon'ble Judges : J.N. Patel, J;A.P. Lavande, J

Bench : Division Bench

Advocate : M.R. Daga with Ms. Haidari, for the Appellant; A.D. Sonak, Assistant Public Prosecutor, for the Respondent

Judgement

J.N. Patel, J.—In Sessions Trial No. 174/99, the appellant/accused came to be tried by the Additional Sessions Judge, Chandrapur on a charge of having committed murder of one Vilas Yadao Shedmake and thereby committing an offence punishable u/s 302 of Indian Penal Code. He was also charged for having committed house trespass having made preparation for causing hurt to the deceased and thereby committing an offence u/s 452 of Indian Penal Code. The learned Judge by his judgment and order dated 30.12.2000 found the appellant/accused guilty of having committed offence u/s 302 of Indian Penal Code and acquitted him of the offence punishable u/s 452 IPC. Accordingly, the learned Judge sentenced him to undergo imprisonment for life, which is challenged in this appeal.

2. In nutshell, it is the prosecution's case that on 1.8.1999 at about 7.30 P.M. a quarrel took place between the wife of the deceased, i.e. Chandrakala Vilas Shedmake PW.6 and that of the appellant/accused Suman w/o Chatur Atram DW.2. In the said quarrel, the husband of Chandrakala, i.e. the deceased came to rescue her but in the meantime, the appellant/accused Chatur rushed towards him with a Barchi and inflicted 3 blows because of which the deceased Vilas

suffered injuries on his chest and abdomen. After causing the injuries, the appellant fled away from the scene of occurrence. In the meantime, PW.5 Vikas, brother of the deceased, went to Laxman Neware PW. 1 a Police Patil of the village and informed him that the appellant Chatur assaulted his brother Vilas. They went to the Sarpanch of the village. The villagers gathered at the spot and Sainath Istam tied dupatta on the injuries of Vilas. It is the case of the prosecution that the injured Vilas informed them that he has been assaulted by the appellant Chatur and then died on the spot. Thereafter Laxman Neware PW. 1 accompanied by Sarpanch and two other persons went to Police Station Kothari and lodged report Exh. 11. The report was taken by AP1 Kapildeo Shukla.

3. On the basis of the said report, the police registered Crime No.38/99 against the appellant/accused under Sections 302, 452 of Indian Penal Code. It is the prosecution case that thereafter the appellant/accused himself came to the Police Station and reported the incident on which he came to be arrested. AP1 Shukla PW.8 visited the spot but as it was night time, the Police Patil of the village and the villagers were instructed to take care of the dead body. Thereafter, on the next day, AP1 Shukla prepared the spot panchnama (Exh. 13), inquest panchnama (Exh. 14) and also seized articles from the spot under seizure memo Exh. 17. Thereafter he sent the dead body for post-mortem examination. During the course of investigation, he recorded statements of witnesses who were acquainted with the incident. At the instance of the appellant/accused, the police was able to discover a knife which came to be seized under the seizure memo Exh. 16. All the seized articles in the case were forwarded to the Chemical Analyser. The appellant/accused was also sent for medical examination.

4. On conclusion of the Investigation, the Charge-sheet came to be filed against the appellant/accused. He was tried and convicted by the trial Court.

5. In respect of the charge, the appellant pleaded not guilty and claimed to be tried. During the course of the trial, he took upon a defence that the incident took place out of quarrel between his wife and that of the deceased and that the deceased suffered injuries when the accused attempted to save his wife and daughter from the deceased.

6. The trial Court found that the prosecution has proved that it is the appellant/accused who is responsible for committing the murder of the deceased and arrived at a finding that the appellant/accused has failed to prove that he inflicted the injuries on the deceased in exercise of right of private defence.

7. Mr.M.R.Daga, learned Counsel for the appellant/accused, submitted that the trial Court failed to appreciate the plea of right of private defence taken by the appellant/accused for which there is sufficient evidence on record including medical evidence to show that the appellant and his wife had sustained injuries and further the appellant has also examined his daughter and wife as witnesses in his defence.

8. Mr.Daga submits that though the appellant does not dispute the incident,

there is no evidence to the effect that he had any intention to commit murder of Vilas. On the other hand, he was required to intervene in the quarrel as Vilas was assaulting his wife and daughter with stick and, therefore, the appellant deserves to be acquitted on the count of having exercised his right of private defence in order to save his wife and daughter in the incident.

9. Mr.Daga has also pointed out to us that the prosecution has suppressed the fact that the appellant and his wife suffered the injuries which would rather establish the plea taken by the appellant/accused of having acted in exercise of his right of private defence. Mr.Daga further submitted that even the conduct of the accused in going to the Police Station immediately after the incident also goes to prove his innocence.

10. In the alternative, Mr.Daga submits that if at all this Court comes to the conclusion that the appellant has exceeded his right of private defence and at the most he could have been convicted for having committed offence u/s 304 of Indian Penal Code but this is not a case where his conviction and sentence u/s 302 of IPC can be sustained.

11. Mr.Sonak, learned Additional Public Prosecutor, submitted that the prosecution case as established before the trial Court clearly goes to show that the appellant/accused has taken under advantage of the situation and came to the spot armed with a Barchi (super) and the deceased Vilas who was trying to intervene and pacify the quarrel between the their wives was struck by giving three blows on vital organs which clearly indicates that the appellant/accused had intention to cause his death and the case of the appellant/accused would not be covered by any of the exceptions and his plea of exercising right of private defence deserves to be discarded.

12. Mr.Sonak submitted that the trial Court has taken a proper view after considering all the facts and circumstances brought on record by the prosecution by leading cogent, consistent and reliable evidence of witnesses before whom the victim has also attributed the authorship of the injuries to the appellant/accused Chatur which stands corroborated by medical and forensic evidence.

13. Mr.Sonak submits that the appellant does not dispute that the deceased Vilas died a homicidal death and, therefore, considering the facts and circumstances of the case, no interference is called for in the matter and the appeal deserves to be dismissed.

14. The star witness in the case is Chandrakala, the wife of the deceased P.W.6. In her evidence before the Court, she has deposed about the incident having occurred at about 7.30 P.M. According to her, there was a quarrel going on between her and the wife of the accused and that the wife of the accused and her daughter rushed towards her in courtyard to beat her. They caught hold of her hair and made her fall on the ground. At that time, her husband came to rescue her and accused Chandrakala rushed towards her husband with Barchi and inflicted blow of it to her husband. She has emphasised that the accused has

inflicted three blows on the person of her husband and thereafter he ran away because of which her husband was injured and was made to lie on the wooden cot in the courtyard and thereafter her brother-in-law Vikas, Nanji Kodape, Police Patil Ashok Veladi and Sainath and other people came there, before whom her husband stated that he was assaulted by Chatur by Barchi. Sainath tied clothes to the wound and about 10 minutes thereafter her husband expired.

15. In so far as all the other witnesses, namely, PW.1 Laxman, PW.2 Nanaji, PW.4 Sainath and PW.5 Vikas are concerned, on going through their evidence, we find that none of them has deposed about seeing the incident. They have arrived at the scene of occurrence after the victim was assaulted. PW.5 Vikas, brother of the deceased, claimed to have witnessed the incident but he was discredited on this point by confronting him with his statement recorded by the police u/s 161 of Criminal Procedure Code by pointing out that the fact of having witnessed the incident is an improvement made before the Court as it is an omission in his statement. So also the said fact has been also not stated by PW.6 Chandrakala which has come in her cross-examination.

16. In view of the fact that the appellant/accused has not disputed that the deceased died a homicidal death and that he is author of the injuries, but having taken a plea that it was in exercise of right of private defence and, therefore, we propose to examine the case in the light of this defence taken by the appellant/accused.

17. On going through the evidence on record, it is an admitted position that the deceased came to be assaulted when in the quarrel between their wives, the deceased intervened. The appellant has examined his daughter Ranjana as D.W.1 and his wife Suman as DW.2, who have also given version of their story in which they attribute that it was the deceased who was aggressor and was armed with a stick and assaulted them. This fact does find support as AP1 Shukla in his evidence particularly on being cross-examined accepted that Suman, wife of appellant/accused Chatur Atram, did suffer injuries of which medical report is Exhs.36 and 37 and so also the accused of which medical report is Exh.39, 40 and looking at the nature of the injuries, we have no hesitation to hold that it can be caused by stick. If we see the sequence of events which surface from the evidence on record, the wife of the appellant and the appellant could not have suffered the injuries in the incident after the deceased was assaulted by the appellant/accused and, therefore, in our opinion, the plea taken by the appellant/accused of having exercised right of private defence appears to be probable. The trial Court did not take this into consideration at all and in spite of the fact that the appellant and his wife were injured in the incident, ignored the plea of the appellant/accused.

18. What we find is that this is a case where the appellant/accused has exceeded his right of private defence. May be so, because of the fact situation that is when, the parties were involved in a quarrel and the appellant having intercepted in the quarrel when he saw that his wife was being beaten by the deceased, one

can very well visualise that he was deprived of the power of self-control by this grave and sudden provocation and in order to save his wife and daughter assaulted the victim with a Barchi.

19. Therefore, after taking into consideration the fact that the deceased gave three blows on vital parts of the victim, it is a case where he has exceeded his right of private defence and due to this it cannot be said that the appellant had any intention to commit murder of deceased Vikas. The trial Court failed to take proper view of the matter and arrived at a conclusion that deceased is guilty of having committed murder particularly because he has inflicted 3 injuries on the vital part of the deceased.

20. We have no hesitation to hold that this is a fit case where the charge for which the appellant/accused has been tried and convicted, i.e. for having committed murder of Vikas can be converted from one u/s 302 IPC to one u/s 304 Part I of Indian Penal Code.

21. In the circumstances, we partly allow the appeal and quash and set aside the conviction and sentence of the appellant/accused for having committed offence u/s.302 of IPC and after the conviction of the appellant/accused and instead hold that the appellant/accused is guilty of having committed offence u/s.304 Part I of IPC and sentence the appellant/ accused to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 100/- and in default of payment of fine, to further undergo R.I. for one year.

The appeal stands disposed of accordingly.